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March 10, 2008

VIA HAND DELIVERY

Thomasenia P. Duncan
General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Attn: Jeff S. Jordan

RE: MUR 5968 – Leadership for America's Future PAC
(LEAD PAC) and Ian A. Macpherson, as Treasurer.
John Shadegg's Friends and Ian A. Macpherson, as
Treasurer

Dear Ms. Duncan:

This is in response to the letter from the Federal Election Commission's ("FEC" or "Commission"), dated January 31, 2008, notifying Leadership for America's Future PAC ("LEAD PAC") and Ian A. Macpherson, as Treasurer, and John Shadegg's Friends ("Friends") and Ian A. Macpherson, as Treasurer, of a complaint filed by the Arizona Democratic Party ("Complainant"). The complaint alleges that LEAD PAC, Friends, and their treasurer, and two contributors, Mr. John Dawson and Mr. David S. Van Denburgh ("Contributors"),

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violated the FEC's regulations.¹ As will be shown, the complaint is without any legal or factual basis and should be dismissed with a finding of no reason to believe a violation has occurred.

The Allegations

The complainant takes lawful contributions and a carefully selected slice of the contribution history of LEAD PAC, adds conclusory speculation about the intent of the contributors and committees, and alleges that "[a]t least three FEC regulations may have been violated...." Complaint p. 2. First, they allege that the contributions were made in the name of another in violation of 11 C.F.R. §110.4(b) because the contributions from LEAD PAC to Friends were really contributions from Mr. Dawson and Mr. Van Denburgh. Second, they allege that Mr. Dawson and Mr. Van Denburgh knew that their contributions would be given to Friends, which was a violation of 11 C.F.R. §110.1(h). Third, they allege that the treasurer of LEAD PAC and Friends had a legal obligation to investigate the contributions under 11 C.F.R. §103.3(b). They also seem to argue that LEAD PAC exists only to support Congressman Shadegg's campaign, so its expenses are a contribution to the campaign.

While complainant cites several regulations, the entire complaint is based upon three factual allegations. The first is that both Mr. Dawson and Mr. Van Denburgh each made the maximum lawful contribution to Congressman Shadegg's 2008 election campaign, and the second is that both men also contributed the maximum amount lawful contribution to LEAD PAC. As the reports of the committees reflect, both of these assertions are true.

The third, and most important allegation, is that Mr. Dawson and Mr. Van Denburgh each made his contribution to LEAD PAC with the knowledge that all or part of it would be given to the campaign committee. As will be shown, this assertion must be proven for 11 C.F.R. §110.1(h) to apply, and only if that section of the regulations applies can Mr. Dawson's and Mr. Van Denburgh's contributions to LEAD PAC be treated as contributions to the campaign committee. If it cannot be shown that at the time they made their contributions Mr. Dawson and Mr. Van Denburgh had actual knowledge that those contributions would be given to Shadegg's Friends, there is no reason to believe the respondents violated the regulations. As the record will reflect, not only has the complainant failed to cite any

¹ The complainant does not cite allege a violation of any specific provision of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §431, et. seq. (FECA).

evidence of knowledge, the Congressman, treasurer of both committees and the contributors all state that, in fact, the contributors had no such knowledge.²

Legal Analysis

It has been long settled that a member of Congress can control both a "leadership PAC" and principal campaign committee and that those committees are not considered affiliated and, therefore, have separate contribution limits. 11 C.F.R. §100.5(g)(5). This means that a contributor can lawfully give the candidate's Leadership PAC \$5,000 per year while, at the same time, giving the candidate's campaign committee \$2,300 for the primary and \$2,300 for the general election. Moreover, the Leadership PAC can lawfully give the candidate's campaign committee \$5,000 for the primary and \$5,000 for the general election.

This treatment of leadership PACs is consistent with Commission regulations which permit contributions to both candidates and political committees that support the same candidate in the same election. 11 C.F.R. §110.1(h). Specifically, the regulations permit a donor to contribute to a PAC, including a leadership PAC, that "has supported, or anticipates supporting, the same candidate in the same election," so long as that donor does not have "knowledge" that a substantial portion of his contribution will be contributed to that same candidate in the same election, and that the contributor not "retain control over the funds." *Id.* Moreover, the Commission has ruled that the donor must have actual knowledge at the time he makes his contribution that the funds will be used on behalf of the candidate. See MUR 5881 (Citizens Club for Growth); MUR 5732 (Matt Brown for U.S. Senate); MUR 5678 (Liffrig for Senate); and MUR 5019 (Keystone Federal PAC).

In MUR 5881, the Commission determined there was no violation of 11 CFR §110.1(h) based largely on the donor's lack of actual knowledge. The complaint alleged that contributors gave to both CFG-PAC and Walberg for Congress with the knowledge that their contributions to CFG-PAC would support

² The sworn affidavits of Congressman Shadegg (Attachment 1), and Ian Macpherson, treasurer of John Shadegg's Friends and LEAD PAC (Attachment 2), are being submitted with this response. In addition, we have talked with Mr. John Dawson (who, to the best of our knowledge, is not represented by counsel), and he is providing a sworn affidavit stating that he had no knowledge that his contribution to LEAD PAC would be used to support Friends. However, because of Mr. Dawson's schedule and the fact that he is in Arizona, there has been a delay in getting the original sworn affidavit. We expect to be able to submit his affidavit within the next several days. Finally, Mr. David Van Denburgh counsel provided us with a copy of the affidavit he has already submitted to the FEC with his response.

Walberg for Congress. The three pieces of evidence supporting the complaint included a five-page solicitation letter on PAC letterhead explaining how and why to donate to both the PAC and Campaign, an email entitled "Club Members Take Down Incumbent!" claiming the PAC was largely responsible for Walberg's primary election victory, and the fact that as of August 2006, 86% of Walberg's financial backing came directly or indirectly from the PAC. MUR 5881 Factual and Legal Analysis dated Aug. 15, 2007. In its affidavit, the PAC responded that it did not inform contributors how their contributions would be used other than to support candidates generally and that it did not know in advance who would be receiving contributions. In finding there was no violation, the Commission noted, "Although a contributor might reasonably infer from the solicitation as a whole that some portion of his or her contribution to CFG-PAC might be used to support WFC, such an inference alone does not suggest that the contributors had 'actual knowledge.'" MUR 5881, Citizens Club for Growth Factual and Legal Analysis dated August 15, 2007, p 9.

Similarly, in MUR 5445, the Commission found no reason to believe in a case where the donors only had a generalized understanding that funds would potentially be used to help a specific candidate. The Complaint asserted that an individual had contributed to several PACs in order to generate campaign support for Geoffrey Davis's campaign. Even though the individual "acknowledged that it was not unforeseen that the respondent PACs would contribute to the 2004 Davis Committee," the Commission declined to apply 11 CFR §110.1(h) because evidence of knowledge was lacking. MUR 5445, Campaign for Working Families, First General Counsel's Report dated February 2, 2005, p 12.

Given this well settled rule regarding §110.1(h), the question is whether there is any evidence that Mr. Dawson or Mr. Van Denburgh had actual knowledge that, at the time they made their contributions, those contributions would be used to make a contribution to Congressman Shadegg's campaign committee?

Facts

The complainant offers no evidence that either John Dawson or David S. Van Denburgh had knowledge that their contribution to LEAD PAC would be used to support Congressman Shadegg's campaign. In fact, the evidence shows that these donors lacked any knowledge whatsoever that their contributions would be contributed to Friends. Thus, the donors lacked the actual knowledge necessary to apply 11 C.F.R. §110.1(h).

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According to sworn statements, Congressman Shadegg met separately with Mr. Dawson and Mr. Van Denburgh and requested that each contribute to LEAD PAC "for the purpose of helping elect a Republican majority in Congress." The Congressman also solicited contributions to his campaign committee. By check dated May 31, 2007, John Dawson contributed \$2,300 to John Shadegg's primary campaign and the same amount to his general election campaign. By check dated June 2, 2007, David S. Van Denburgh also contributed the maximum lawful amount to John Shadegg's campaign. In addition, both men contributed \$5,000 to LEAD PAC. According to the sworn affidavit of Congressman Shadegg, he did not in anyway suggest to the donors that their LEAD PAC contributions would be used for his campaign. This testimony is fully supported by the two donors who state that at the time they made their contributions they believed the money would be used to help elect Republicans to office. According to both men, at no time prior to when they contributed to LEAD PAC did Congressman Shadegg or anyone else suggest or imply that the contribution would be used by LEAD PAC to make a contribution to John Shadegg's Friends.

Given the consistent and uncontroverted testimony of the Congressman and the two contributors, it is clear that there is no support for the application of 11 C.F.R. § 110.1(h) and , therefore, complainant's allegations cannot be supported.

Finally, the complainant seems to allege that LEAD PAC really existed to only support Congressman Shadegg and, therefore, all of its expenses were in-kind contributions to the campaign. Putting aside the validity of the legal theory upon which complainant relies, once again the facts do not support its argument.

In an effort to make LEAD PAC look like it existed only to support Congressman Shadegg's campaign, the complainant asks the Commission to only focus on a six month block of time in a non election year as being indicative of LEAD PAC's legitimacy as a leadership PAC. While LEAD PAC only made the two contributions during the first half of 2007, it must be remembered 2007 was not an election year. Nevertheless, during the second half of 2007 it also contributed to John McCain 2008 and Tim Bee for Congress. The real measure of LEAD PAC can only be judged by also looking at its considerable activity over an election cycle. For example, in 2006 LEAD PAC made 104 contributions totaling \$184,000 to Republican candidates, including Congressman Shadegg, and the National Republican Congressional Committee. Once you look at LEAD PAC's activity over an election cycle, it is obvious that there is nothing unusual for a leadership PAC.

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Conclusion

Complainant's allegations rest on 11 C.F.R. §110.1(h), but that regulation requires that donors have actual knowledge at the time they make their contribution that their contribution will be given to the candidate. However, the contributors unequivocally deny that they had any knowledge whatsoever that their contributions would be given to Congressman Shadegg's campaign committee. These statements are supported by the affidavit of Congressman Shadegg. Moreover, when LEAD PAC's contribution history is viewed over the election cycle view, it is clear that the PAC functions as a multicandidate leadership PAC, contributing to numerous Republican candidates.

For the reasons stated above, and consistent with its prior application of the law, we respectfully request the Commission find no reason to believe LEAD PAC and Ian A. Macpherson, as Treasurer, and John Shadegg's Friends and Ian A. Macpherson, as Treasurer, violated the FECA and dismiss this matter.

Respectfully Submitted,



Lawrence M. Noble

Attorney for John Shadegg's Friends, and
Ian A. Macpherson, as treasurer, and
Leadership for America's Future PAC
("LEAD PAC"), and Ian A. Macpherson,
as treasurer.

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FEDERAL ELECTION COMMISSION
Washington, D.C.

In re: MUR 5968

Affidavit of The Honorable John Shadegg

I, The Honorable John Shadegg, being duly sworn, upon my oath, state as follows:

1. I am a Member of Congress representing Arizona's Third Congressional District. I was first elected to Congress in 1994. My principal campaign committee is John Shadegg's Friends.
2. I am also associated with Leadership for America's Future PAC ("LEAD PAC"), a leadership PAC which makes political contributions to support Republican candidates for office. It is registered with the Federal Election Commission as a multi-candidate committee.
3. To the best of my knowledge, on or about May 29, 2007, I met with Mr. David S. Van Denburgh and asked him to make a contribution to LEAD PAC for the purpose of helping elect a Republican majority to Congress. I also asked Mr. Van Denburgh to contribute to my principal campaign committee, John Shadegg's Friends. At no time prior to, during, or after, that meeting did I tell, suggest or imply to Mr. Van Denburgh that his contribution to LEAD PAC would be used to make a contribution to John Shadegg's Friends.
4. To the best of my knowledge, on or about May 31, 2007, I met with Mr. John Dawson and asked him to make a contribution to LEAD PAC for the purpose of helping elect a Republican majority to Congress. I also asked Mr. Dawson to contribute to my principal campaign committee, John Shadegg's Friends. At no time prior to, during, or after, that meeting did I tell, suggest or imply to Mr. Dawson that his contribution to LEAD PAC would be used to make a contribution to John Shadegg's Friends.

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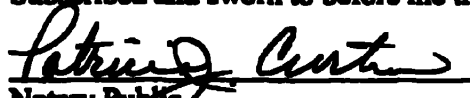
ATTACHMENT 1

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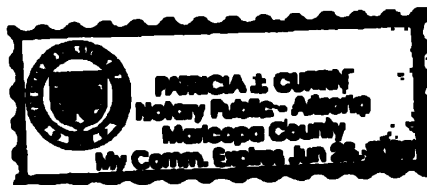
5. On or about June 26, 2007, I authorized LEAD PAC to make a \$5,000 contribution to John Shadegg's Friends for the 2008 primary campaign and a \$5,000 contribution for the 2008 general election campaign. I did not discuss these contributions with either Mr. Dawson or Mr. Van Denburgh prior to their being made.


John Shadegg

Subscribed and sworn to before me this 7th day of March 2008.


Notary Public

My Commission Expires: 6/25/2008



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In re: MUR 5968

Affidavit of Ian A. Macpherson

IAN A. MACPHERSON, being first duly sworn, upon his oath deposes and states
as follows:

1. I am currently Treasurer of "John Shadegg's Friends" ("Friends"), Congressman Shadegg's campaign committee, and Treasurer of "Leadership for America's Future PAC" ("LEAD PAC"), both of which are respondents in MUR 5968. I have been Treasurer of the Friends since July 2005, and Treasurer of LEAD PAC since August 2006.
2. As Treasurer of the Friends, I am aware that, on or about May 31, 2007, Mr. John Dawson made a \$2,300 contribution to John Shadegg's Friends for Congressman Shadegg's 2008 primary campaign and a \$2,300 contribution for the Congressman's 2008 general election campaign. To the best of my knowledge, and according to the campaign's records, Mr. Dawson has made no other contribution to the Congressman's 2008 campaign. I had no knowledge that Mr. Dawson intended to make the contributions prior their being made.
3. As Treasurer of the Friends, I am also aware that, on or about June 2, 2007, Mr. David S. Van Denburgh made a \$2,300 contribution to John Shadegg's Friends for Congressman Shadegg's 2008 primary campaign and a \$2,300 contribution for the Congressman's 2008 general election campaign. To the best of my knowledge, and according to the campaign's records, Mr. Van Denburgh has made no other contribution to the Congressman's 2008 campaign. I had no knowledge that Mr. Van Denburgh intended to make the contributions prior their being made.
4. As Treasurer of LEAD PAC, I am aware that Mr. Dawson also made a \$5,000 contribution to LEAD PAC. I had no knowledge that Mr. Dawson intended to make a contribution to LEAD PAC prior to it being made. To the best of my knowledge, and according to the records of LEAD PAC, this is the only contribution Mr. Dawson made to LEAD PAC in 2007.
5. As Treasurer of LEAD PAC, I am aware that Mr. Van Denburgh also made a \$5,000 contribution to LEAD PAC. I had no knowledge that Mr. Van Denburgh intended to make a contribution to LEAD PAC prior to it being made. To the best of my knowledge, and according to the records of LEAD PAC, this is the only contribution Mr. Van Denburgh made to LEAD PAC in 2007.

ATTACHMENT 2

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6. I have no knowledge of any fact or communication, written or verbal, tacit or explicit, from either Mr. Dawson, Mr. Van Denburgh, Congressman John Shadegg or anyone else that the contributions to LEAD PAC by Mr. Dawson and/or Mr. Van Denburgh were made with the knowledge or intention that they would be used for any particular candidate or contributed or transferred to any particular candidate, including, in particular, Congressman John Shadegg or his campaign committee.


7. I have examined the contribution checks from Mr. Dawson and Mr. Van Denburgh to LEAD PAC, as well as the FEC reports prepared and filed on behalf of the Friends for the Second Quarter of 2007. Nothing on the face of the contributions and nothing I was aware of at the time the contributions were made to LEAD PAC, or I have been made aware of since that time, gives me reason to question the legality of the contributions.

FURTHER YOUR AFFIANT SAITH NAUGHT.

Dated this 7th day of March 2008.


Ian A. Macpherson
Treasurer, John Shadegg's Friends
Treasurer, LEAD PAC

Subscribed and sworn to before me this 7th day of March 2008.

 **LISA SCHULTZ**
Notary Public - Arizona
Maricopa County
Expires 04/15/2011


Notary Public

My Commission Expires: 4/15/2011